

MOSER LAW FIRM, PC



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April 16, 2024

VIA ECF

Hon. Joan M. Azrack, USDJ
United States District Court, Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *D'Aguino v Garda CL Atlantic, Inc.*, Case No. 16-CV-00641 (JMA)(SIL)

Dear Judge Azrack:

Plaintiffs respectfully oppose Garda's motion to strike the motion to vacate and remand in its entirety (Docket Entry ("DE") 146). As explained in Plaintiff's Memorandum of Law In Support of the Motion to Vacate and Remand (DE 144, at 2-3)

:

Plaintiffs respectfully request *an extension to file the instant reply, along with the Defendant's opposition, nunc pro tunc* April 10, 2024, pursuant to FRCP 6(b)(1)(A). . . On January 19, 2024, the Court directed the undersigned to file the instant reply on or before March 4, 2024. The date to submit the reply was *not entered by the undersigned's calendaring clerk*. On April 2, 2024 the failure to calendar the March 5, 2024 date was discovered. I also discovered that we did not have a copy of the deposition transcript of John Rossi, which was necessary to prepare the instant reply. We obtained the complete transcript directly from the court reporter on April 10, 2024 and filed the instant reply the same day.

Back on May 31, 2023, the Court directed the Plaintiffs to serve the motion to vacate and remand by June 15, 2023 and directed Garda to oppose the motion no later than July 15, 2023, with the fully briefed motion to be filed by July 30, 2023. *See* DE 130 and Docket Order dated May 31, 2023. Plaintiffs timely served the motion on June 15, 2023. However, as of August 21, 2023, Garda had not yet opposed the motion, and Plaintiffs filed the motion without opposition. *See* DE 133-137.

On January 19, 2024, even though Garda had not yet opposed the motion, the Court graciously granted Garda until February 19, 2024 to oppose it. Although it appears that Garda properly calendared the date for submission of the fully briefed motion (March 4, 2024) and was aware that the Plaintiffs had not served their reply, it made the tactical decision to remain silent until the motion was fully briefed to raise the untimeliness of the opposition.

Hon. Joan M. Azrack, USDJ
Page 2

MOSER LAW FIRM, PC



Garda's refusal to oppose the motion delayed the motion's briefing by 150 days (from July 30, 2023, until March 4, 2024) or about 5 months. Now Garda claims that the delay of approximately 1 month caused by the Plaintiffs' inadvertent failure should effectively result in a default. We respectfully request that the Court consider the motion and again apologize to the Court and to Garda for the delay.

Respectfully submitted,

Steven J. Moser

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CC: All counsel of record via ECF